

## MEMORANDUM OF LAW

DATE: May 23, 1990

TO: Carol Young, Library Analyst, Library  
Department

FROM: City Attorney

SUBJECT: Board of Library Commissioners

You recently asked what the Board of Library Commissioners may do as a body regarding items on a local ballot - especially a Library Bond - and state ballot issues and legislation. Specifically, how far can the Board go in support of items on the local or state ballot? Similar issues have arisen in the past, although not regarding an advisory board or commission.

### BACKGROUND

The main areas of concern appear to be expenditure of public funds on political activities and involvement of public officers and employees in political activities. In the most recent California Supreme Court case on a related issue, the court in *Stanson v. Mott*, 17 Cal. 3d 206 (1976) held that since there was no statutory authority for a State Park and Recreation Director to expend public money for election campaign purposes, such expenditure was not allowed; however, taxpayer funds may be expended for purely informational purposes. It is important to differentiate between "campaigning" and "lobbying" as regards expenditure of taxpayer funds. Of course, local agencies are permitted to urge legislators to either vote or not vote a certain way on items of interest to the agency, which would be lobbying, but agencies may not use public funds to urge taxpayers to either vote for or against a measure on the ballot, which would be campaigning.

Statutory guidance regarding political activity of public agencies is provided in the California Government Code. Government Code section 3201 states that "political activities of public employees are of significant statewide concern." Further, Government Code section 3203 holds that no restrictions shall be placed on the political activities of any officer or employee of

a state or local agency, except as otherwise provided in that chapter. And section 3207 of that chapter does allow local agencies to prohibit or restrict officers and employees engaging in political activity during working hours, or political activities on the premises of the local agency.

### PRESENT CONCERNS

The main question at this time is the relevance of all this to the Board of Library Commissioners. It must first be determined whether Commission members come under the guise of officers or employees of a public agency; and second, whether the Library Board would plan to expend public funds in any "campaigning."

In *City Council v. McKinley*, 80 Cal. App. 3d 204, 210 (1978), the court said that, "the term officer, in its common acceptation, is sufficiently comprehensive to include all persons in any public station or employment conferred by government." San Diego City Charter section 43 provides that the City Council may, by ordinance, create and establish advisory boards, and that the members shall be appointed by the Mayor with Council confirmation. San Diego Municipal Code section 26.01 is the codification of the creation of the Board of Library Commissioners. Since the Commission includes persons "in a public station conferred by government" it is therefore concluded that its members are "officers" as that term has been defined by the courts. 3 E. McQuillin, *The Law of Municipal Corporations* section 12.29 at 148 (3d ed. 1982). In addition, San Diego City Charter section 117(a)2. includes members of all boards and commissions in the unclassified service of the City.

California Government Code section 3202 defines local agency as "a . . . city . . . or municipal corporation" and also defines "officers and employees" as those "whose principal duties consist of providing services to the given local agency." Since the San Diego City Charter and the San Diego Municipal Code both state that the Advisory Boards generally and the Library Commission in particular are to serve in an advisory capacity to the Mayor, Council, and City Manager, and in this capacity provide a service to the local agency, the members of the Board are included in the statutory definition of officer and employee.

San Diego City Charter section 31 entitled Political Activities states that:

(a) No officer or employee of the City, except elected officers and unsalaried members

of commissions, shall during regular hours of employment take an active part opposing or supporting any candidates in any City of San Diego political campaign or make contributions thereto in behalf of any candidates, nor shall such person seek signatures to any petition seeking to advance the candidacy of any person for any municipal office. Nothing in this

section shall be construed to prevent any officer or employee, whether Classified or Unclassified, from seeking election or appointment to public office or from being active in State or Federal political campaigns, in any bond issue campaign including municipal bond issues, or from being active in local political campaigns.

(b) Every municipal employee shall prohibit the entry into any place under his control occupied for any purpose of the municipal government, of any person for the purpose of therein making, collecting, receiving, or giving notice of any political assessment, subscription, or contribution.

Section 31 draws express distinctions between "officers and employees" and "elected officers and unsalaried members of commissions." Hence as unsalaried members of commissions, library commissioners are free to exert their political views but nevertheless may not use public facilities, public supplies or indicia of office as this would lead to the unfair advantage condemned in Stanson.

#### CONCLUSION

It is important that subsection (b) of the San Diego City Charter section 31, noted above, be followed. Members of the Board of Library Commissioners may not solicit or receive contributions in "any place . . . occupied for any purpose of the municipal government . . . ." San Diego City Charter section 31. This would preclude solicitation or collection of funds in the libraries, for example.

In addition, the Board must comply with the same rules which a local agency must observe regarding political activity; that is, no public funds may be expended campaigning for or against ballot measures. What that means is that no City personnel or equipment may be expended in a member's or the Board's involvement either for or against any ballot measure.

Of course, Board members do not lose their first amendment right of free speech and may speak freely as individuals regarding ballot measures or any political campaign. However, unless the entire Commission speaks with one voice on a certain issue, members should be cautious that they are identified as members of the Commission, rather than as representing the Commission in any effort to influence voters on that particular ballot measure.

Please let me know if I can be of further service.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:mrh:273(x043.2)

ML-90-61